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September 12, 2021

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The Hon. Raymond J. Dearie  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

re: United States v. Andre Wilburn, No. 19-CR-139(RJD)

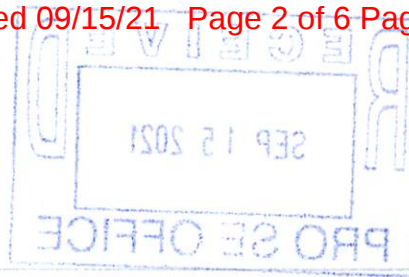
Dear Judge Dearie:

The defendant respectfully submits this letter in reply to the government's response to his motions for (1) revealing the deal (EFC No. 100); and discovery of statements made by (un)indicted co-accused. Below the defendant explains why his motions should be granted.

The defendant pleaded guilty on October 24, 2019 and sentencing has been repeatedly "delayed" for nearly two years. While the COVID-19 pandemic has played a role, MDC Brooklyn implemented video and teleconferencing which allowed for remote judicial proceedings, including sentencing. The defendant fails to understand the nexus between the pending case before Chief Judge Brodrie, No. 19-CR-108, and the request for discovery in this case. There are, however, several discovery violations in that case as well which continue to hamper adequate defense. Impaired defense "skews the fairness of the entire [criminal justice] system" and may result in the conviction of an innocent person. see *Barker v. Wingo* 407 US 514, 532 (1972)

Under *Brady v. Maryland*, 373 US 83 (1963), a prosecutor may not refuse a defendant's request for evidence that is "exculpatory" and "material" to either guilt or punishment. see *Kyles v. Whitley*, 514 US 419, 433 (1995) (Evidence is "material" where there is a reasonable probability that its disclosure would have produced a different result at trial.) *Brady* applies to evidence that supports defendant's





claim of innocence and also evidence that weakens the government's case. The government has a Constitutional and statutory duty to disclose discovery, and that duty to disclose continues throughout the proceedings. see ~~the~~ *Cone v. Bell*, 556 US 449, 469 (2009) ("[W]hen the State withholds from a criminal defendant evidence that is material to... guilt or punishment, it violates [the] right of due process of law..."); *United States v. Thomas* 239 F.3d (2d Cir 2001) (duty to disclose continues... requiring government to disclose material to defense "promptly," meaning as soon as prosecutor becomes aware of ~~the~~ it.); see also Fed. R. Crim. P. 16(c)

While it is not mandatory for the Court to review defendants letters when he is represented by counsel, it is at the sole discretion of the Court to grant such motions. Given the extraordinary and compelling circumstances of this case — like ineffective assistance of counsel, long sentencing delays, prolonged detention at MDC Brooklyn during a pandemic, and the government's reckless disregard for Brady material even prior to the October 24, 2019 guilty plea — it would be in the interest of justice, the interest of the public, and fundamental fairness to grant the defendants motions. see *United States v. D'Souza*, No. 88-CR-374, 1992 WL 151920 ("no compelling reason for hybrid representation.") see also *Pennsylvania v. Ritchie*, 480 US 39, 59 (1987) ("Unless defense... becomes aware that other... evidence was withheld and brings it to the courts attention, the prosecutors' decision "not to disclose cannot be challenged.")

The defendants motions for discovery relating to co-accused should be granted because defendant is requesting discovery which was never disclosed, like promises of leniency for co-accused (ECF No. 100). see *Giglio v. United States*, 405 US 150, 155 (1972) (the defendant discovered... that the government had failed to disclose a promise... made to defendants co-conspirator.) In fact, such little discovery has been made available from the government in this case — despite a duty to disclose — that on August 20, 2021, defendant's counsel mailed a brand new hard drive to the



United States Attorney's Office so that the government could copy discovery and mail it to MDC Brooklyn so that defendant could finally inspect and copy the material over 30 months after being charged. The fact that the defendant is able to show by reasonable probability that the delay in disclosing discovery changed the outcome of the case — because defendant would not have pleaded guilty and would have insisted on going to trial — is a Brady violation. see *United States v. Bundy*, 968 F.3d 1019 (9th Cir 2020) (indictment was properly dismissed because given evidence that government acted with at least reckless disregard for Brady value of some evidence that prejudiced defenses ability to marshal their case...) see also *Lewis v. Conn. Comm'r of Corr.*, 790 F.3d 109, 122-23 (Brady violation where government failed to disclose that key witness was coached by police and induced to testify falsely because prosecution has general duty to disclose "regardless of whether the information is known only by the police and not the prosecutor.")

Based on the preceding reasons, the defendant respectfully requests that the Court grant the defendant's motions for discovery.

Respectfully submitted,



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